

**SANDIA CORPORATION
SF 6432-IN (04/2015)
SECTION II**

**STANDARD TERMS AND CONDITIONS FOR
INTERNATIONAL COMMERCIAL TRANSACTIONS**

THE FOLLOWING CLAUSES APPLY TO THIS CONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE SIGNATURE PAGE OR SECTION I OF THIS CONTRACT. (CTRL+CLICK ON A LINK BELOW TO ADVANCE DIRECTLY TO THAT SECTION)

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Transactions

Owner: Procurement Policy
Department

Release Date: 04/28/15

APPLY TO CONTRACTS AT ANY VALUE
APPLY TO CONTRACTS EXCEEDING \$30,000
APPLY TO CONTRACTS EXCEEDING \$150,000
APPLY TO CONTRACTS EXCEEDING \$5,000,000

ACCEPTANCE OF TERMS AND CONDITIONS

This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Seller, by signing this Contract, delivering Items ordered under this Contract, and/or acceptance of payment shall constitute Seller's unqualified acceptance of this Contract. Sandia hereby objects to any terms and conditions contained in any acknowledgment of this Contract that are different from or in addition to those mentioned in this document.

APPLICABLE LAW

The rights, obligations, claims, and disputes of the parties hereto shall be governed by this Contract and construed in accordance with the laws of the State of New Mexico and the United States. The parties agree to jurisdiction and venue in the United States Federal District Court for the District of New Mexico.

ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Sandia. This Contract may be transferred from Sandia to DOE or its designee, and in case of such transfer and notice thereof to the Seller, Sandia shall have no further responsibilities hereunder.

BANKRUPTCY

If the Seller enters into any proceeding relating to bankruptcy, it shall give written notice to the Sandia Contracting Representative (SCR) responsible for this Contract within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the Contract numbers for which final payment has not been made.

CANCELLATION FOR DEFAULT

(a) Sandia may cancel this Contract, in whole or in part, if the Seller fails to comply with any of the provisions of this Contract, or fails to provide adequate assurance of future performance. In that event, Sandia shall not be liable for any amount for Items not yet accepted by Sandia.

(b) Seller shall not be liable for delays in performance occasioned by causes beyond Seller's reasonable control and without Seller's fault or negligence.

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(c) The rights and remedies of Sandia in this clause are in addition to any other rights and remedies provided by law or under this Contract.

CHANGES

The SCR may at any time, by written notice, make changes to the Statement of Work (SOW) of this Contract. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Contract signed by both parties. Any claim for adjustment by Seller must be made within a reasonable time from the date of receipt of Sandia's change notice, although Sandia in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Nothing in this clause, including any dispute with Sandia about the equitable adjustment, shall excuse Seller from proceeding with the Contract as changed.

COMPLIANCE WITH LAWS

Seller shall comply with all applicable laws, codes, ordinances, orders, or other legal requirements of the country, and any subdivision thereof in which Seller is an established business entity or where any work under this Contract is performed.

DEFINITIONS

The following terms shall have the meanings set forth below for all purposes of this Contract.

(a) Contract means this agreement, all sections thereof and other documents incorporated into this Contract by reference thereto.

(b) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.

(c) Item means commercial goods, commercial services, commercial software and commercial components thereof that are to be deliverables to Sandia under this Contract.

(d) Sandia means Sandia Corporation under Contract No. DE-AC04-94AL85000 with the U.S. Department of Energy for the management and operation of the Sandia National Laboratories.

(e) SCR means Sandia Contracting Representative, the only person authorized to execute and/or administer this Contract for Sandia.

(f) SDR means Sandia Delegated Representative, the person(s) who has been delegated only the limited authority as defined in Section I of this Contract.

(g) Seller means the person or organization that has entered into this Contract with Sandia.

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EXCUSABLE DELAYS

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of Sandia, (3) acts of the Government in either its sovereign or contractual capacity, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, and (10) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless-

- (1) The subcontracted supplies or services were obtainable from other sources;
- (2) The SCR ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the SCR shall ascertain the facts and extent of the failure. If the SCR determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of Sandia or the Government under the Termination Clause of this contract.

EXPORT CONTROL

(a) Any item, technical data, or software furnished by Sandia in connection with this purchase order/contract is supplied for use in the United States only. Contractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 CFR 120 - 130; the Export Administration Act, 50 USC app. 2401 - 2420, including the Export Administration Regulations (EAR), 15 CFR 730 - 774; the Atomic Energy Act of 1954, as amended (AEA); and including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Contractor agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Contractor or Contractor's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Contractor shall immediately notify the SCR if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited. (b) Contractor shall immediately notify the SCR if Contractor is, or

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becomes, listed in any Denied Parties List or if Contractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency. (c) If Contractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Contractor represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR. The Contractor shall flow down the requirements of this clause to all subcontracts.

EXTRAS

Items shall not be supplied in excess of quantities specified in this Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

GRATUITIES OR KICKBACKS

No gratuities (in the form of entertainment, gifts, of otherwise) or kickbacks shall be offered or given by Seller, to any employee of Sandia with a view toward securing favorable treatment as a supplier. Seller shall not accept for or otherwise assist any employee of Sandia in transferring anything of value to any foreign government official of any country, with a view toward obtaining, retaining or facilitating any business with any government.

INFORMATION OF SANDIA

Information provided by Sandia to Seller remains the property of Sandia. Seller agrees to comply the terms of any Proprietary Information Agreement with Sandia and to comply with all proprietary information markings and restrictive legends applied by Sandia to anything provided hereunder to Seller. Seller agrees not to use any Sandia information for any purpose except to perform this Contract. Seller agrees not to disclose any Sandia information to third parties without the prior written consent of Sandia.

INFORMATION OF SELLER

Seller shall not provide any proprietary information to Sandia without prior execution by Sandia of a Proprietary Information Agreement.

INSPECTION AND ACCEPTANCE

Sandia and the Government may inspect all deliverables at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities and assistance necessary for safe and convenient inspection without additional charge. No inspection shall relieve Seller of its obligations to furnish all Items in accordance with the requirements of this Contract. Sandia's final inspection and final acceptance shall be at

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destination. Seller shall not re-tender rejected Items without disclosing the corrective actions taken.

LANGUAGE

The English language version of this Contract shall be controlling. All deliverables under this Contract shall use and/or be in the English language.

ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Order Item descriptions, prices, quantities, delivery dates and other statements or special provisions on the order, (2) Section I to this Contract, (3) the signature page of this Contract, (4) SF 6432-IN Section II, and (5) incorporated by reference provisions of this Contract.

PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of Items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. All payments will be made in U.S. Dollars in accordance with the laws of the country where performance of this Contract takes place.

QUALITY CONTROL SYSTEM

Seller shall provide and maintain a quality control system to an industry recognized Quality Standard for any work performed under this contract. Records of all quality control inspections performed by Seller shall be kept complete and available to Sandia during the performance of this Contract and for a period of three (3) years from the final payment under this Contract.

RIGHTS AND INTERESTS

All rights and interests resulting from this Contract shall pass directly from the Seller to the Government upon inspection and final acceptance by Sandia.

RISK OF LOSS

If Sandia is responsible for the risk of loss during transportation of compliant Items, Sandia shall compensate Seller the lesser of (1) the agreed price of such Items, or (2) the Seller's cost of replacing such Items; and such loss shall entitle the Seller to an equitable adjustment in delivery schedule obligations.

SUBCONTRACTS

If Seller subcontracts under this Contract, Seller shall incorporate into the subcontract all of the requirements set forth in this Contract to any and all such subcontractors.

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TAXES

To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of an U.S. Federal, State, and local taxes clause of the contract.

Definitions. As used in this clause—

“Contract date” means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“Country concerned” means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

“Tax” and “taxes” include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

“All applicable taxes and duties” means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States, or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of the country concerned.

It is the Contractor’s responsibility to obtain the exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, Sandia Corporation, the Contractor, any Subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable.

TERMINATION FOR CONVENIENCE

Sandia may terminate for the convenience of Sandia or the Government this Contract, in whole or in part, for any Items not yet accepted by Sandia. In that event Sandia shall be liable for the purchase price of Items already completed or identified to this Contract but not yet accepted by Sandia.

TIMELY PERFORMANCE

Seller’s timely performance is a critical element of this Contract. Seller shall not make delivery in advance of the scheduled delivery date without advance written approval of the SCR. If Seller becomes aware of difficulty performing this Contract, Seller shall timely notify Sandia in writing, giving pertinent details.

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PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

In performing this contract the Contractor may be provided with Personally Identifiable Information (PII) relating to Sandia employees, contractor employees, and any other individuals related to the work under this contract. The Contractor agrees that the Contractor will take all reasonable steps and precautions to ensure this provided PII is adequately controlled, protected and only used to perform work called for under this contract. For the purposes of this agreement PII is defined as: Any of the information listed below that can be used to distinguish or trace an individual's identity, is collected and maintained for the purpose of conducting official Sandia business, and is not solely comprised of information that is available to the general public: social security number, driver's license number, passport number, other federal- or state-issued identification card number, bank account number (with or without routing number, access code, or Personal Identification Number [PIN]), financial or benefit account number in combination with any required code permitting access, background information or verification reports or credit report, including consumer reports, medical or health information, including biometric, biomonitoring, or genetic information, employment history including ratings, salary, wage, deduction information, and disciplinary actions, security clearance history or related information, criminal history, date of birth or age, place of birth, mother's maiden name, race or ethnicity.

Notes: One means of distinguishing or tracing an individual's identity is to include the first name or the first initial and last name of an individual in combination with any information listed above. PII does not include information that is on Sandia computing resources as a result of incidental personal use of computing and information resources or other assets.

Loss of Control of PII: If the Contractor becomes aware or suspects that any Sandia provided Personally identifiable Information, has been inappropriately, taken, used, disclosed, and/or released or that the controls for access to the information have been compromised, the Contractor will immediately take steps to prohibit further disclosure and will give verbal notice to Sandia's Security Incident Management Program (SIMP) by calling and reporting the incident at either SNL/NM Pager (505) 283-7467 (283-SIMP) or for contracts issued in California call (925) 294-3238 (these are manned 7 days a week 24 hours a day). After notifying SIMP, also verbally notify the SCR and SDR (if one is identified in this contract). In addition to the immediate verbal notifications, written notification will be provided to the SCR and SDR (if one is identified in the contract,) within 72 hours of the Contractor's learning of the situation. The Contractor will cooperate with Sandia and provide information needed to allow Sandia to evaluate the nature and extent of the release or loss of control. The provisions of this clause shall survive and continue in force following the completion of work under this agreement until such time that any provided PII is either destroyed in its entirety in a manner that ensures it is not readable or

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decipherable through any means, or that the information including all copies is returned to Sandia. The contractor shall ensure that these provisions shall be made applicable to any subcontractor or non-governmental third party who receives PII provided through this agreement.

TRANSPORTATION

If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the Government pursuant to Contract No. DE-AC04-94AL85000. Confirmation will be made by Sandia National Laboratories.

WAIVERS

Failure of Sandia or Seller to enforce any of the provisions of this Contract shall not be construed as evidence to interpret the requirements of this Contract, nor a waiver of any requirement, nor of the right of Sandia or Seller to enforce each and every provision. All rights and obligations shall survive final performance of this Contract.

WARRANTY

Seller expressly warrants that no counterfeit Items or components in Items shall be delivered to Sandia on this Contract. Seller expressly warrants that all Items provided under this Contract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon final acceptance of conforming Items and extend for a period of 365 days. If any nonconformity is discovered in that time, Seller shall promptly repair, replace, or reperform such Items at Seller's election. Transportation of replacement Items and return of nonconforming Items and repeat performance of services shall be at Seller's expense. Sandia shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify Sandia of whether it chooses to make repairs or replacements within a reasonable time after Sandia's notice of nonconformity. If repair or replacement or reperformance of services is not timely, Sandia may elect to return the nonconforming Items or repair or replace them or reprocurer the services at Seller's expense.

WORK FOR HIRE

Contractor hereby acknowledges that all duties performed hereunder are specifically ordered or commissioned by Sandia Corporation ("Work"); that Contractor has required all of its employees who will do the Work to assign all intellectual property generated in the course of employment to the Contractor; that the Work constitutes and shall constitute a work-made-for-hire as defined in the United States Copyright Act of 1976; that Sandia Corporation is and shall be

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the author of said work-made-for-hire and the owner of all rights in and to the Work. To the extent that the Work is not recognized as a work-made-for-hire, Contractor hereby assigns, transfers, and conveys to Sandia Corporation, without reservation, all of Contractor's rights, title and interest in the Work, including, without limitation, all rights of copyright and copyright renewal in said Work or any part thereof. Contractor agrees to execute all papers and to perform such other proper acts as Sandia Corporation may deem necessary to secure for Sandia Corporation the rights herein assigned.

ADDITIONAL TERMS AND CONDITIONS

This Contract incorporates by reference with the same force and effect as if they were given in full text, the following cited Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. The full text of these clauses may be found at Title 48 of the Code of Federal Regulations (CFR) at <http://www.ecfr.gov> or at the FARSite at <http://farsite.hill.af.mil> under regs – FAR or DEARS. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute Sandia and Sandia Contracting Representative (SCR).

APPLY TO CONTRACTS AT ANY VALUE

FAR 52.203-3 Gratuities
FAR 52.222-29 Notification of VISA Denial
FAR 52.222-50 Combating Trafficking in Persons
FAR 52.225-13 Restrictions on Certain Foreign Purchases
FAR 52.244-6 Subcontracts for Commercial Items
FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels
FAR 52.249-2 Termination For Convenience of the Government (Fixed-Price), including Alternate I when construction
FAR 52.249-8 Default (Fixed-Price Supply and Service)
DEAR 952.211-71 Priorities and Allocations (Atomic Energy) This clause applies only if Section I designates a Government Priority.
DEAR 952.247-70 Foreign Travel
DEAR 952.250-70 Nuclear Hazards Indemnity Agreement
DEAR 970.5243-1 Changes

APPLY TO CONTRACTS EXCEEDING \$30,000

FAR 52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment

APPLY TO CONTRACTS EXCEEDING \$150,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

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FAR 52.203-7 Anti-Kickback Procedures excluding paragraph (c)(1)
FAR 52.203-12 Limitation on Payments to Influence Certain Federal
Transactions
FAR 52.203-17 Contactor Employee Whistleblower Rights and Requirement to
Inform Employees of Whistleblower Rights
FAR 52.203-13 Contractor Code of Business Ethics and Conduct
FAR 52.247-63 Preference for U.S.-Flag Air Carriers.

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